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LEGAL ASPECTS OF HYPNOTISM.

In treating of this subject I propose to maintain throughout the psychologist's point of view; that is to say, I shall speak of the phenomena of hypnotism and of their bearing upon the public morals, as these phenomena appear to the student of man's mental life. This will lead me to make certain references to the laws already existing, so far as they may be employed for regulating the practice of hypnotism, and to offer some suggestions as to the general propriety of legal control of this practice; as well as—more especially—concerning the punishment of crimes committed under hypnotic influence. In all this, however, I ask my hearers constantly to bear in mind the important difference between the point of view of the lawyer, the judge, or the legislator, and that which is assumed in the discussion of this paper.

Two remarks may fitly introduce the more specific consideration of the legal aspects of hypnotism. The first of these concerns the historical and practically universal character of the phenomena. It is a common impression that hypnotism offers something quite new or wholly peculiar; and which, therefore, may properly demand, when it comes before the law, some sudden and significant depart-

ure from established precedents, if not from time-honored principles. But this is not the fact. The practice of hypnotism, whether through auto-suggestion or through influence from others is about as old as human history and is nearly as wide-spread as the race itself. Roughly speaking, the experience of mankind with hypnotic phenomena may be divided into three eras: In the first, hypnosis is connected with sooth-saying, magic, healing by laying on of hands, and various forms of witchcraft and priestcraft. Some of the Egyptian papyri seem to show that its therapeutic uses were not unknown at an early date in the land of the Nile. Similar phenomena were familiar to the Persian magi and to the Indian Yogins centuries ago. The latter have for an indefinitely long time practiced auto-hypnosis by gazing fixedly at the tips of their own noses, or by use of a method called *Trâtaka*, which is distinctly like that discovered independently by Dr. Braid. There are also certain Dervishes who are accustomed to put themselves into hypnotic conditions by pendulum-like swingings of the head accompanied by ceaselessly calling the name of "Allah." Preyer is undoubtedly justified in his claim that he has seen many women praying in the churches of Europe who were in a condition of hypnotic ecstasy.

The second era of the experience of the race with hypnotic phenomena may be said to have begun with Mesmer, a Viennese physician, who put forth the claim in his doctor's thesis of 1766 that the planets are of important influence in the cure of diseases. Mesmer assumed a universal fluid, the medium of a mutual influence extending to all objects and including animate bodies. It insinuates itself into the nerves and thus renders the individual susceptible to influences from the stars and *from those who surround him*. But the third and last era for hypnotism began when, in 1841, Dr. Braid of Manchester, England, denied the theory of magnetic fluid, or other occult physical or spiritual influence, and asserted that the phenomena of hypnotism are of a mixed nervous and mental character, and by no means wholly independent of the will or moral character of the hypnotized subject. Since Dr. Braid's time, and especially during the last thirty years, a vast amount of trained observation and experiment has been brought to bear upon this subject; as a result it may be said to be definitely and finally established that the principle of mental suggestion, combined with the well-known laws of association and habit, when taken in conjunction with those individual peculiarities or even idiosyncracies which all social phenomena exhibit, affords the chief, if not the sole, satisfactory explanation of these phenomena.

The other introductory remark to which attention should be directed is this: Again contrary to the common opinion, the truth appears to be that a very large proportion of both sexes, and of all ages except the very youngest, may be made more or less subject to hypnotic influences. It is indeed true that nearly all those subjects with whom Charcot and his followers have had the most marked success in obtaining results that are alleged to be mysterious and quite inexplicable according to any known principles of physiology or psychology, have been highly neurotic women; and that these subjects have been prepared in a way by being repeatedly "subjugated" by the same operator under especially favorable influences. But, on the other hand, it is also true that, if at first their own consent and co-operation can be obtained, the patient and skilful operator succeeds to a greater or less extent with the large majority of his subjects,—young children and particularly "flighty" adults, who are incapable of prolonged attention, being the principal exceptions.

The bearing of these introductory remarks upon the more particularly *legal* aspects of hypnotism will now be obvious. In treating of the subject we have to do—I repeat—with phenomena that are as old as human history and as widely distributed as the race itself. They cannot be ignored, or dismissed hastily, or handled satisfactorily without prolonged and intelligent study. To account for them one can no longer resort to causes of an occult character—divine, or stellar, or telluric; the phenomena are known to be ascribable to influences which men exert upon themselves or upon one another, that are primarily of a mental sort, but, that operate through the nervous organism and customarily result in the production of more or less abnormal conditions of that organism. More particularly, as affecting the health and sanity of persons, the practice of hypnotism appears before the law as a species of so-called "mind-cure," which is liable to turn out well or ill, according to the condition of the patient or the competency and good-will of the practitioner. As affecting the property, reputation and other interests of a more material sort, the practice of hypnotism falls under the principles regulating the influence—due or undue—of one person over another. In a word, *the legal aspects of hypnotism all come under the principles regulating the influence of one member of the social organization over other members of the same organization.* To suppress the phenomena by law would be quite impossible; to regulate them satisfactorily by law will be difficult; hastily to make special laws provid-

ing for them would be unwise and probably ineffective to prevent the most serious evils arising from them.

When, then, hypnotism appears before the law, the first duty of those who are interested in it from the legal point of view is to inform themselves concerning the facts and the generalizations from the facts, so far as generalization has been possible. To obtain this information the makers and enforcers of law must have resort to those who have studied the physiology and psychology of the subject in the most thorough and unprejudiced way. So long as legislators are unable or unwilling to do this, and so long as they are unable to get at the needed facts and truths by doing this, further special legislation would certainly be most wisely deferred. Meantime, so far as this is possible, the principles of law already established should be made applicable to the particular cases which arise. And I only anticipate what I hope to render somewhat clearer by this paper when I say that, in my judgment, there is less need than is often supposed for making new laws in order fairly well to reach most of these particular cases.

I shall now treat some of the most important legal aspects of hypnotism under the following three heads: (1) Crimes committed upon the hypnotized subject; (2) Crimes committed upon others by, or through, the hypnotized subject; and (3) certain more general and indefinite relations of hypnotism to the law of the land. As has already been said, each one of these three topics will be briefly discussed with a view to indicate what, in my judgment, are the most trustworthy conclusions affecting legal practice as these conclusions have been reached in the course of recent psychological investigation.

And, first, as to crimes committed upon the hypnotized subject, there can be no doubt that the susceptibility of the person who is in a state of hypnosis to certain forms of criminal treatment is greatly increased; and also that the liability to detection on the part of the criminal is, under the same circumstances, very considerably lessened. This is particularly true in those cases where the practitioner has so frequently hypnotized the same subject as to induce a relation of special "rapport," which may become akin to real mental and physical subjugation. The danger of subjection to undue or criminal influence grows out of the very nature of the condition called hypnosis; and it is emphasized by the application of the laws of association and habit to the relation which exists between the hypnotizer and his patient. One of the most marked characteristics of the

hypnotic state is what I will venture to call the process of "decentralization" which goes on; that is to say, physiologically considered, the higher cerebral centres lose their place of command; considered from the point of view of the conscious mental life, the person suffers a loss of the power of rational self-control. In a word, the hypnotized subject is in a condition of preparation to become the "tool" of another—for evil as well as also for good. When this condition has been repeatedly brought about under the influence of the same person, the readiness of the hypnotic—in some cases amounting to a total inability to resist—to do, or to submit to, what is commanded or suggested, becomes greatly intensified. By continued practice of this special form of influence very considerable changes can gradually be brought about in the opinions, the current thoughts, and the ruling principles of conduct. And the fact that memory of what occurs during the hypnosis is so much impaired, if not wholly destroyed, undoubtedly adds to the security enjoyed by the would-be perpetrator of a crime upon the person he has hypnotized. In this connection may be mentioned the celebrated case recorded by Ladame of a married woman whose abuse by a doctor who had frequently hypnotized her resulted, during the protracted absence of her husband, in a pregnancy, the cause of which had passed entirely beyond possible recall by the sufferer's memory.*

It is to be said, on the other hand and in modification of the extreme of fear and suspicion to which the facts just noted have driven some minds, that few persons can be hypnotized, in the first instance, against their will; and that all therefore, have some choice as to the character of the persons to whom they will resort for this sort of practice. (I will remark, in parenthesis, that those who desire and need help in the overcoming of certain nervous disorders, bad habits of body or mind, and immoral practices, often derive no considerable assistance from being treated judiciously by the method of hypnotism.) Moreover, the profounder sources of action and the fundamental moral character do ordinarily assert themselves, even in the hypnotic condition; indeed they are, perhaps as a rule, the last things to give way before hypnotic as well as other influences. Still further, the criminal cannot safely reckon on a complete loss of memory on the part of the subject upon whom, while hypnotized, the crime is committed. As Forel has well said:† "Tempting and easy as the

*See the remarks of Sallis, Ueber hypnotische Suggestionen, etc., p. 45.

†Der Hypnotismus, seine psycho-physiologische, medicinische, und strafrechtliche Bedeutung, p. 144.

execution of a crime upon a hypnotized person is, just so dangerous on the other hand are its consequences for the criminal; for the entire structure on which he builds his security is a very fleeting thing which can easily be destroyed. Oftentimes the hypnotic subject wakes at a moment when one is least expecting it."

The crimes to which the hypnotized subject is rendered most liable are, first of all sexual assault; and then—more doubtfully—the falsifying of memory through induced hallucinations, undue testimony and other similar forms of influence, and possibly even induced suicide. It is probable also that this means has, in certain instances, been employed for the abduction of children, as du Potet in his "Complete Treatise of Magnetism" (1821) asserts to have frequently been the case in India. Most of the actual cases of crime which have come before the law consist, however, of sexual assaults committed upon females by so-called magnetic doctors to whom they have resorted for the purpose of being healed of nervous and other disorders, or by other males who have acquired this influence over them. The Swiss jurist, von Lilienthal, in the collection of crimes upon hypnotized persons which he discusses in his monograph* (published in 1887) enumerates only crimes of this order. The number of cases of this kind then recorded was not large. Among them perhaps the most notable is that of a certain roving beggar named Castellan who, in spite of a most unprepossessing personal appearance, succeeded in repeatedly throwing into a semi-cataleptic condition a girl of twenty-six years of age, belonging to a family which he had casually visited, in compelling her to abandon her home with him, and in completely subjugating her under his control. According to credible testimony this girl had previously been "by no means hysterical, of blameless morality, and faithful in the fulfilment of her duty."

If the risk of crime of this sort being committed upon the hypnotized subject is very considerable, when in the hands of an unscrupulous practitioner, the risk of being accused of crime of which he is not guilty is not wanting in the case of the most scrupulous practitioner. Beaunis is, therefore, justified in holding that hypnosis, like chloroform, should not be administered except in the presence of some third person who shall secure and guarantee good faith. Indeed, the attempt to hypnotize any one against his own will or—in the case of minors and incompetent persons—the will of the responsible guardian should be, and probably would be, held to constitute an infringement of personal rights which is punishable by law. The natural

*Der Hypnotismus und das Strafrecht, p. 71f.

unwillingness to complain of any such attempt, and especially to endure the suspicion of a weak or unsound mind, which the complaint would almost necessarily entail, constitutes a special difficulty in the way of dealing with all such cases.

It is undoubtedly theoretically possible to induce hypnotized subjects to falsify testimony against themselves, or against others, to persuade themselves that they remember committing crimes which they never committed, etc. Bernheim and many other experimenters have had no especial difficulty in inducing by suggestion, almost all kinds of hallucinations of this sort, both with and without hypnosis. This has been likened to the illegal and criminal preparing of witnesses.* It is also quite conceivable that undue influence should be brought to bear in this way for the disposal of property, either by gift or by bequest. I do not find, however, that any actual cases of such influence have occurred with which the existing laws are not competent to deal, in case those laws are intelligently and fairly interpreted and enforced.

That it is a crime against the health or other important interests of a person, as dependent upon the exercise of his right of self-management and self-control, to hypnotize him under any circumstances, cannot be maintained. Doubtless injury may be committed by injudicious experimenting; and even greater injury by establishing the hypnotic habit, which is in many cases quite as much to be dreaded as the alcoholic habit, the opium habit, or the bromide habit. But Forel may safely be trusted when he affirms that here, as in all other forms of therapeutics or of psycho-physical experimentation, everything depends upon the wisdom and skill of the operator. In his own experience, out of several hundred cases, his testimony is that not a single one has suffered any bad results, except a slight temporary headache. Most certainly the evils produced by hypnotic practice, taking the world over and the practice even in its crudest and most unskillful forms, bear no comparison with the evils produced by the unskilled and ignorant, or experimental use of drugs by the practitioners in medicine. Were this the topic before us I might properly refer to the facts that no little of both the good and the harm done by doctors is really due to their use of this same principle of suggestion; and that auto-suggestion is uniformly a powerful agent toward the recovery of any patient. But as to the propriety of controlling the practice of hypnotism by law I shall refer again in another connection.

*Compare Moll, *Hypnotism*, p. 346.

Most of the cases of crime which is actually committed, or which may be committed, upon the hypnotized person do not seem to require any special or new legislation. What is required, I have already said, is more intelligence on the part of the courts and of the legal profession as to the nature and limits of this particular kind of influence of one person by another. In practice, the requirement amounts to this, that every case actually occurring shall be investigated by competent experts and allowed to take its place before the law on its own merits.

With respect, however, in the second place, to crimes committed by, or through, hypnotized subjects, the case is by no means so simple and so clear. I say "*by, or through,*" for in all this class of cases we are likely to have to determine how responsibility and guilt are to be distributed between the person accused of influencing another to commit a crime, and the person accused of acting in a criminal way under such criminal influence.

There is little doubt that any number and almost any kind of crimes may be so impressed upon the imagination of good hypnotic subjects as to lead to their going through with these same crimes, under favoring circumstances and while in the hypnotic condition, in a pantomimic sort of way. And previous good character or kindness of intention are not a sure guaranty against the influence of such hypnotic suggestion. Just as in dreams virtuous persons not infrequently commit in imagination the grossest acts of violence or lust, or suffer the most dreadful calamities with only a somewhat stagey excitement of feeling but without quickening of pulse or tremor of heart. If the dreaming becomes somnambulistic the attempt may be made to put into actual execution the imagined deed. Thus Liégeois gave to a young girl whom he had hypnotized a powder consisting of sugar and said to her: "Here you have arsenic; tomorrow morning when no one is watching you, shake it into a glass of water and give it to your aunt to drink as lemonade. In this way you will poison her." The aunt, who had been informed of the experiment, reported on the following day that her niece had carried out the criminal suggestion precisely as she had been ordered to do by M. Liégeois. The same experimenter induced another patient to fire at her mother a pistol which she believed to be loaded. Sallis also had little difficulty in persuading a young man who was under his care in an "Electro-therapeutic" institute at Baden-Baden to fire a pistol at a servant under the hypnotically suggested impression that he was himself to be attacked by robbers who would endeavor to take his life.

Under hypnotic influence it is also possible for the experimenter to induce the hypnotized subject to commit theft or perjury, to sign spurious contracts or wills, and even to drink what is believed to be a deadly poison for the purpose of committing suicide. In spite of this experimental evidence, however, the cases where crimes have actually been committed by hypnotized persons under the influence of criminal suggestion are comparatively rare. This fact, taken into connection with the character of all the phenomena observed, has led some authorities to what seems to be an extreme opinion in the other direction. One of the most trustworthy of the so-called school of Nancy, namely Dr. Bernheim, makes out a flat contradiction between his school and the school of Paris, in answer to the question: "Can crime be actually procured by hypnotic suggestion?" Another writer, who rather inclines to the side of Bernheim and the school of Nancy, answers this question with a qualified affirmative:* "Yes; crime can be so procured—in one's study."

Now the truth plainly lies between the two extremes. It certainly does not follow that the same patient who can be induced to stab some one with a paper knife, or to administer sugared water as though it were poison of arsenic, would use a knife of steel or the poison of arsenic known to be such, in the same way. In most experiments conducted "in one's study," some, at least dim consciousness seems to remain with the hypnotized subject that he is acting a part, is indeed a partner with the experimenter in a sort of parlor comedy. In general, the hypnotic will use a paper dagger much more recklessly than one made of steel. And just as the difference between the epileptic patient and the hysterical patient is made manifest by the fact that the former when seized with a fit is not unlikely to fall into the water or the fire, but the latter takes good care on falling down not to burn herself or even injure her clothing, so the difference between the hypnotic and the real criminal is that the former tries to avoid doing real harm and the latter is seeking precisely this—to accomplish some particular harmful act. Moreover, as I have already said, previous good character and habitual good will do continue to show themselves even in the hypnotized person. Although self-consciousness and the feelings of responsibility and of personal identity have become much depressed, and the power of self-control is much diminished, yet those feelings and this power may subsist side by side with hypnotic hallucinations and hypnotic *aboulia*; as indeed, they do with the hallucinations and *aboulia* of

*So Moll, Hypnotism, p. 337.

most of the insane. In his work already referred to, the jurist von Lilienthal cites instances—which might be almost indefinitely multiplied—of resistance partial and temporary, or total and final, to hypnotic suggestion of the criminal sort.

In spite of all those truths which mitigate the danger, and diminish the probability of any extended general use of hypnotic suggestion for the procuring of crime, it cannot be denied that the danger is real and that the theoretical possibility has been in fact realized. The gravest danger for society, and the greatest difficulty for the law, are connected with the powerful influence which can, in certain cases, undoubtedly be exercised through what is known as *post-hypnotic suggestion*. In certain, more than customarily favorable, but not so very rare, cases it is possible for the operator to lodge firmly in the mind of the hypnotized person, a suggestion which is subsequently carried out when this person is in an ordinary waking condition, and with a more or less complete forgetfulness of the origin of the suggestion. Indeed, it not infrequently happens that the actions thus resulting appear distasteful to the person performing them; and on being called to account for the performance, the doer of the deed assigns a reason quite foreign to the real cause.

It will appear clear, then, that it is theoretically possible for the expert in hypnotic suggestion so to treat the hypnotic subject as to induce the performance by the latter, when in a normal condition, of a criminal deed which shall be acknowledged as his very own by the doer, and perhaps ascribed to an entirely fictitious reason, which reason may itself either be suggested by the operator or merely fancied by the subject. Of course, any such a case as this would present the extreme difficulties for the law to cope with in connection with the whole class of similar cases. As Dr. Leopold Drucker, *Hof-und Gerichtsadvocat* in Vienna declares:* “The danger of hypnotic suggestion consists in this, that the suggested ideas and the actions which correspond to them, not only prevail during the continuance of the hypnosis, but even become effective after awakening and especially under circumstances which belong to a later point of time, and without the individual himself remembering what occurred during the hypnosis.” In confirmation of this opinion we have actual instances like that narrated by the celebrated alienist, Krafft-Ebing; here the patient was induced to appear on the day following the hypnotic suggestion at a given locality, to make an entrance into

*Der Hypnotismus und das Civil—und Strafrecht, p. 9.

a building by opening a window and letting herself down into the room, and there to sing a song in a dramatic manner.

In spite of all, however, we find a marked difference of opinion as to the number of undoubted cases of crimes committed purely through hypnotic suggestion which have actually been adjudicated in the law courts of Europe. In France, where the matter has been most thoroughly discussed, the jurist, Liégeois, and the physician, Gilles de la Tourette have taken opposite sides; the former—and this is contrary to what we should expect—holding that the danger for society from this source is very great, and the latter holding that it is very small. The most celebrated case which has come before the law in that country is probably that of Gabriele Bompard, who put forward the defence that she assisted in the murder of the hussar, Gouffé, under an irresistible impulse from hypnotic suggestion administered by her lover, Michel Giraud. The court promptly handed over the culprit for experimental examination to the experts, Charcot and Dr. Brouardel, who decided adversely to her claim of irresponsible action. In pronouncing sentence of equal responsibility before the law, the presiding judge declared that an honest subject resists a dishonest suggestion. If he obeys, it is not because his will is subjugated, but because he consents. In this unqualified form the declaration of the French judge is psychologically incorrect. By repeated and prolonged use of hypnotic suggestion the honest person, after persistently resisting the temptation to crime, *may* finally yield as to a compulsory influence. But this proved psychological truth does not by any means of itself justify the decision of the courts in the celebrated case which occurred a few years ago in Kansas. On May 5th, 1894, in Winfield of that State, Thomas McDonald shot fatally Thomas Patten; but it was pleaded in his behalf that he was hypnotically influenced to this crime by one Andrew Gray. In this case the plea was so far accepted by the Lower Tribunal that Gray was convicted of murder and sentenced to death; but the doer of the criminal deed was declared innocent. On appeal the Superior Court sustained the verdict of the Lower Tribunal. In my judgment there can be little doubt of the justice of punishing the instigator of the crime; but I have very grave doubts about the justice of releasing, as innocent, the man who did the shooting.

In general, it is probable that the chances of the guilty going free from deserved punishment, if the plea of acting under hypnotic influence is allowed as a defence, except in a very guarded way, are greater than those of the innocent and irresponsible being punished

unjustly, if such manner of defence is habitually disregarded or treated slightly. Cases of the following sort are, however, likely, occasionally to occur. A maid-servant R. L. had been convicted on sufficient evidence of stealing the valuables of her mistress. But the physician of the prison where she was confined, remembering that a former employer of hers, Dr. G rault, had been accustomed to hypnotize her, and on finding her still subject to somnambulistic attacks, elicited the truth as to the crime of which she had been convicted, in the following way: He hypnotized the prisoner; he learned from her when in this condition what she had entirely forgotten while in her normal state, namely, that in a somnambulistic sleep she had removed her mistress' valuables to what she was convinced would be a safer place of deposit, and had then on waking forgotten entirely about the occurrence.

How now, in view of all the phenomena and of the somewhat conflicting opinions regarding them, should the law deal with crimes alleged or proved to be committed under hypnotic influence? I suppose that the answer to this question will depend in some measure at least, upon which of the two schools of jurists, the so-called classical or the anthropological, one espouses. The former recognizes freedom of will and punishes, in part at least, on account of moral blameworthiness, and with some rough attempt to apportion the punishment to the amount of blameworthiness. The other school denies freedom of will, and aims to take no account of personal blameworthiness but to regard only the interests of the social organization. Campili has, indeed, so far pressed the distinction in the position of the two schools as to affirm that the anthropological school is compelled by its principles to punish, in the interest of protecting society, hypnotic criminals whom the classical school would be obliged to refrain from punishing, because such criminals plainly acted without premeditation or intention of their own to commit crime. As a student of man's mental and moral life and development, I am prepared to say that, in the long run and larger domain, the two classes of consideration emphasized by the two schools must be brought largely to accord. But holding by the main positions of the so-called classical school it is my judgment that the present need is very little, or not at all, for new criminal legislation to cover the cases of crimes committed by, or through, hypnotized persons; the need is rather for a more careful and intelligent application of the existing laws to the particular cases which arise under them. A few words of a more specific character may be in place here.

In any case where the hypnotic person causes, or knowingly permits himself to be filled with the suggestion of a criminal act, and then afterward, in however compulsory a manner, carries out the criminal intent, it would seem that both the hypnotizer and the hypnotized deserve punishment. The adjustment of the degree of punishment proper for each party to such a conspiracy to procure and to commit crime offers one of those problems that are constantly coming before all our courts of justice. It is well always to remember that just as the insane are still usually capable of various degrees of self-control from that approaching the condition of the sanest down to that in which all self-control is nearly or quite lost, and the person becomes the prey of circumstance, the victim of impulse, or the tool of others, substantially so is it with different persons under the differing degrees of influence from hypnotic suggestion. In those cases also, where crime has been committed *through*, rather than *by*, the hypnotic subject the difficulty of adjusting the punishment to the guilty parties is not essentially different. On the one hand we certainly cannot accept the view of M. Desjardins,* who, however, seems to be nearly or quite alone in the opinion, that the punishableness of the hypnotic criminal is in every case justifiable, because he might have known beforehand what a risk he was running in allowing himself to become hypnotized. But, neither, on the other hand, does it seem safe to assume the position that crimes committed by persons whose impulse to commit them is due to hypnotic suggestion, in the administering of which their wills have been in no way implicated, ought uniformly to be freed from blameworthiness and punishment; unless it could be shown that this influence had previously acquired—they themselves being void of evil intent in such a self-surrender—so complete a subjugation of their power of self-control and their feelings of responsibility as to render them the unwilling tool of another. And between this complete condition of subjugation and the condition of full normal responsibility, as has already been indicated, we shall always be liable to find an indefinite number of intermediate degrees. On such an uncertain basis it is probable that there will

*See the *Annales médico-psychologiques*, t. 44 (1886) p. 435, from which as reported in a note in von Lilienthal's work (p. 108) I quote: "M. Desjardins aborde ensuite la question de la responsabilité pénale. A ses yeux il ne saurait avoir de doute sur ce point, que celui qui a consenti à être hypnotisé est pleinement responsable de ses actes delictueux. Ne savait il à quoi il s'exposait en se laissant hypnotiser? Du reste l'hypnotisant partage le responsabilité puisqu' il a provoqué les actes incriminés. Il y a donc double responsabilité, car il y a en deux volontés.

always rest the customary necessity for treating each case that arises in a somewhat distinct fashion.

With regard to the laws upon one class of crimes, as they stood in Austria in 1891, the jurist, Dr. Leopold Drucker, declares there is plainly need of the enactment of new legislation. These crimes consist in the obtaining of secrets or the surrender of person by hypnotic or post-hypnotic suggestion. Says this authority:* "In the case of such a transaction our statute books show a gap; and the particular features of any like matter-of-fact could only by a rather forced construction be brought under certain passages in legislation recently enacted." In my opinion, all contracts, bequests or other gifts, procured by, or in connection with, any manner or degree of hypnotic influence should be regarded as null and void. In order to insure this, however, it would perhaps be enough if, without special legislation, all *such* influence should come to be considered *de facto undue* influence. And yet much of such influence, essentially considered, is not really more "undue" than a very considerable part of the influence which is not considered to be illegal, or to render void the advantages acquired by it, under the existing laws.

The essential fact, I suppose, is that we are here dealing with one class of those very subtle and delicate relations which exist between human beings, which are very powerful and effective in directions that bring human beings before the law, but with which the law can only deal in a relatively rough and unsatisfactory fashion. This is always especially true when legal inquiry has to be made as to whether the surrender of her person, by a woman to a man, (the surrender being accompanied by a legal marriage, or not) has been brought about by any "undue" influence. And back of all is always this question, unanswerable by either the law or the moralist and known only to God himself, as to how far any individual is responsible, in any particular instance, for allowing himself, or herself, to be influenced to do wrong by the suggestion or command of another. I trust I have made it clear—even at the risk of repeating myself wearisomely—that, in my judgment, responsibility for crimes committed under the influence of hypnotic suggestion is a matter of so indefinite degrees that each case requires treatment by itself; that, with one or two possible slight modifications, the existing laws are quite sufficient; and, finally, that what is needed is more enlighten-

*See Work already cited, p. 14.

ment on the part of the lawyers and judges concerning the phenomena and laws of hypnotism itself.

That the person who deliberately sets about subjugating another by repeated hypnotizing in order to make that other his unwilling tool for the commission of crime, is himself a criminal of the worst and most dangerous order, and deserves, if detected and convicted, the severest punishment which the law allows, I do not need to argue.

In passing to consider the third topic—the relation of hypnotism to the law in general—we are met by a question which is of no little theoretical importance, but the affirmative answer to which could probably not be made available for securing the ends of justice in accordance with the principles which control the practice of our own courts of law. The case under the French code differs in important ways. Can hypnotism be useful to justice? Can it be employed to obtain evidence—especially against the accused? In the case of Gabriele Bompard, to which reference has already been made, the culprit, who claimed to have committed the murder under irresistible hypnotic influence, was with her own consent rehypnotized and examined, when in the hypnotic state, with a view to test the truthfulness of her claim. I have already said that the decision of the experts was adverse to her claim. Now it is theoretically quite possible that the truth might sometimes, perhaps frequently, be obtained in this way. For the ancient motto, *in vino veritas*, applies very well to the hypnotic condition on making the necessary changes in the language. According to the more general features of the condition itself, the memory of what had occurred in previous hypnotic states would be more likely to revive and correctly reproduce these occurrences on a recurrence of the hypnosis. Moreover, as we have already seen, the loss of self-control is distinctive of this condition; and secrets, even when to divulge them would convict of punishable crime the person concerned, are very likely to be let slip when that person is in the hands of the skillful practitioner of hypnotism.

On the other hand, if there is a chance of getting truth, which he might otherwise be able and might very much wish to conceal, from the hypnotized as well as from the drunken man, there is also a very good chance of getting a large admixture of mistake and falsehood. For hypnotic subjects, like alcoholic subjects, can lie consciously; they even invent subtle webs of falsehood, as well as those who are in the normal state of waking. Indeed, in certain cases the disposition to prevaricate, and a certain low but effective form of animal cunning, are developed by the hypnosis itself; while an increased

suggestibility for all kinds of illusions and hallucinations is as much an essential feature of the dream-life of hypnotic, as it is of normal sleep. In spite of these difficulties, however, it would be, I think, possible in many cases, if it were legally permissible, successfully to employ hypnotizing for detective purposes. Nor does it seem to me that the unfairness or the illegality of it is any greater than that of numerous methods of detecting crime and procuring evidence which are actually employed; and which, if not sanctioned, are at least winked at by the law. The supposition of Binet and Féré is undoubtedly rather fanciful, and yet by no means impossible of realization. Say these investigators: "We shall perhaps one day have in some band of rogues or of assassins, a hypnotisable subject who will most heartily (*de son plein gré*) lend himself to criminal suggestions. The utility of suggestion, in such circumstances, is readily comprehensible; for persons who act under the control of a hypnotic suggestion have more audacity, courage, and even intelligence than when they act of their own motion." It will perhaps be in good time to await the proved existence of such bands of rogues, or of any considerable extension by individual rogues of the highly dangerous method of procuring the commission of crime through hypnotic influence, before introducing the parallel method of the use of the same influence for detective purposes. In any and all cases the psychological principles with which investigation, as far as at present conducted, furnishes the law upon this point may be fairly summed up in the following sentences: "According to my experience," says Moll,* "the subject keeps his individuality, and what he does not choose to tell, he hides." And, again, although the skillful practitioner who has a fair chance and patiently works at the problem can usually succeed in extracting the truth, yet the only safe general rule runs: "Statements made in hypnosis might be suggestions" (might be very useful for detective purposes) "but could never become proof."

Of course, the legal practice under English and American law would not allow evidence obtained in this way, from the accused against himself, to be used for his conviction, however highly probable it might be that the evidence was a sufficient proof of the facts. In general this practice is as sound psychologically as it is legally. For there is very great danger that the patient will, by suggestion, falsify his own memory and sincerely but falsely accuse himself. In this connection we are reminded of the numerous cases of children,

*Hypnotism, p. 347.

and even of adults, who have been urged into the confession of crimes which they never committed. There are numerous instances—and I have no doubt that every operator who has treated a considerable number of cases could give one or more—where it is entirely possible to get from the hypnotized subject a sworn statement in writing inculcating himself in almost any desired manner. Nevertheless, I do not see why the confessional of the hypnotizer should be allowed the sanctity which is accorded to the confessional of the priest or the lawyer of an accused party.

Shall the practice of hypnotism be regulated by law, is another important question which properly falls under this head. To forbid it altogether by law would indeed be as the professor of jurisprudence, von Lilienthal, has said, "to pour out the child with the bath." Moreover, such a law would, for obvious reasons, most surely prove ineffective. Shall the practice of hypnotism be, if not wholly forbidden, in any way specially restricted or controlled by legislation? Its practice for criminal purposes we have seen to be fairly well—although, perhaps, not quite sufficiently at all points—guarded against by existing laws. But shall all unauthorized practice of hypnotism be considered a crime? In Belgium, for example, a law has been passed which forbids the public exhibition of hypnotized subjects, and forbids also the hypnotizing under any circumstances of persons under eighteen years of age, or of those mentally unsound or weak. The same law makes it punishable to tell any hypnotized person news with a design to deceive him, or to extort secrets from any person while in a condition of hypnosis. The first clause of this law is, in my judgment, wholly to be commended; but I shall return to the subject upon which it pronounces a little later on in the discussion. The other features of the Belgian legislation are of very doubtful expediency from the point of view of the public good.

There are, indeed, real dangers to the hypnotized person, even when in the hands of a more than ordinarily expert practitioner. These dangers are great when the method of hypnotism is tried by unskilled, or venturesome, or unscrupulous persons upon patients of a specially susceptible or neurotic tendency. Among such dangers I may mention the following: (a) The danger of developing a latent hysteria. Especially are the more violent methods apt to produce hysterical crises. In public exhibitions the temptation always is to press for the more remarkable phenomena. And patients who allow themselves for a long time to be exhibited as hypnotic subjects of a remarkable order are extremely liable to serious injury

in this way. (b) There is always the danger of developing an excessive tendency to hypnosis; and this tendency may terminate in (c) what is technically called the "hypnotic training;" where normal self-control, especially in the presence of persons with whom the patient is in particular "rapport," becomes almost or quite completely extinguished. Certainly hypnotism is not a matter to play with, or to "fool with;" and neither playing nor "fooling" is in any supposable case quite free from danger. But, then, the same thing is true of all the most powerful therapeutic agencies; and, indeed, of all the most potent influences which one person exercises over other persons in the same social organization. Judiciously employed, hypnotism has been and, probably, in the future increasingly will be, an effective agent for the benefit of persons afflicted with certain classes of physical and mental ailments.

All legal regulations of hypnotic practice, and all provisions for the punishment of its *unauthorized* employment, necessarily imply the selection of a certain class of persons to whom such practice might be most safely entrusted, and the exclusion, under penalty, of all other classes of persons from the privilege of practice. In considering the enactment of such legislation, doubtless everybody thinks first of the doctors of medicine as the proper class to whom to entrust the practice of hypnotism. But in some respects the persons who bear this title are about as poorly fitted for such a trust—if it is to be called a trust—as is any other class of society. For admitting the propriety of applying the term "doctor" (i. e. of medicine) to the entire multitude whom the law is compelled in this country at the present time to recognize by that title, the great majority of doctors are lamentably ignorant of the most fundamental principles of psychology, neurology, and even physiology; and for unscrupulousness as respects ends and methods they are certainly not a whit superior to any of the other professional, business, or "laboring" classes. Moreover, in this country most of the class are restrained by professional prejudice and by fear of the loss of professional reputation, from making even such inquiry as they are capable of making, into the marvellously complex and difficult field covered by the terms "suggestibility" and "hypnotic" phenomena. As for the so-called "magnetic doctors," and others of like kin, these persons are, as a rule, distinctly inferior both in intelligence and in morals to the practitioners of the "mind-cure," "faith-cure," and "Christian Scientist" order.

The attempt to designate by law the proper parties to authorize for the practice of hypnotism would, therefore, be extremely difficult and complicated. At present, at least, it would be much wiser in my judgment not to attempt such a task ; but to leave any alleged cases of personal injury to be adjusted as fast as such cases arise.

In the absence, or in the place, of any legal restrictions over the practice of hypnotism the following rules, quoted from Beaunis,* should be followed by the conscientious practitioner who wishes to give no offence, and to be responsible for no evil consequences, of which the law might properly take cognizance. "Never to put any one into hypnotic sleep without the formal consent of the subject, and always in the presence of an authorized third party. To inquire beforehand whether the subject is afflicted with nervous attacks and what is the nature of such attacks. To take the same precaution with reference to troubles of the circulation ; and in these cases, if there is no physician in attendance, not to attempt hypnotizing until after having taken the advice of a competent physician. To make the subject feel that there is no danger, and to reassure him in every possible manner. If he continues to manifest the least apprehension, not to insist but wait for another occasion. Not to make suggestions without the formal consent of the subject ; and to avoid every suggestion that is sad, painful, disagreeable, or terrible. To suggest to the subject, before awakening him, that he will experience no inconvenience from the hypnotic sleep, when once he has been awakened." Some of these rules seem to touch, if they do not pass beyond, the extreme limits of the precaution which is desirable or necessary ; but in the keeping of them, under all ordinary circumstances, there is undoubtedly much assurance of safety.

There is one form of the practice of hypnotism, and that the most popular of all, which, in my judgment should be promptly made illegal by the necessary legislation. I refer to the public exhibition of hypnotized persons for pay ; or, in other words, the giving of public shows of hypnotic phenomena. Such legislation would seem to be justified on the ground of the danger, both physical and moral, to the subjects exhibited, as well as of the terrifying and demoralizing influence of the exhibitions upon the general public. But one is compelled to admit—alas !—that the application of these same considerations to the character of public exhibitions in general would deprive

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the public belonging to all social grades, high and low, of a considerable part of their most highly valued forms of amusement. And what can be done by law in the face of a public sentiment which, while it is ready to take from the poor man his only means for support, in pity of the sore back or spavined leg of his breadwinning horse, has little practical interest in the thousands of human beings who, in its mines, and factories, and stores, and on the boards of its theatres and vaudeville performances, are being sacrificed in the interests of its trade or its amusement?

The conclusions reached by this brief and fragmentary discussion of the legal aspects of hypnotism may now be summarized under the following four heads:—

First: Hypnotism appears before the law as a somewhat special case of the influence of one person over another person, under conditions which, although more or less abnormal, are after all not usually such as to make wholly inapplicable the legal principles which regulate all intercourse between persons. In arriving at the facts and laws of such abnormal influence the testimony of experts is particularly necessary; and here, as well as elsewhere, the trustworthy expert is the trustworthy man who has given prolonged and special study to the phenomena. Even so, the testimony of different experts will doubtless continue to differ upon not a few questions both of fact and of physiological and psychological principles.

Second: There is considerable danger of crimes being committed upon the hypnotized subject. The whole condition of hypnosis renders the subject particularly exposed to this danger. But the danger is greatest in respect of sexual crime which is in general a matter of influence by some form of suggestion, and of response with varying degrees of suggestibility; and, finally, of the concurrence of two wills, or the overcoming of one will by another. It does not appear, however, that special legislation is necessary or desirable to meet any of this class of cases which arise under the practice of hypnotism; unless it be where secrets are extracted, or other forms of semi-voluntary concessions are gained, by means of hypnotic influence.

Third: There is a less considerable and yet real danger of crimes being committed by, or through, the hypnotic subject; and if these crimes are due to post-hypnotic suggestion, they become peculiarly difficult of treatment by the usual methods of the law. In such cases our courts may at any time have to face some of the most

puzzling problems with which human attempts at legal justice can have to deal, in the effort properly to distribute the blameworthiness and the punishment of crime. On the one hand, is the danger of punishing most severely the less guilty, or even the wholly innocent; on the other hand, there is the equal, or perhaps greater danger, of letting the guilty go free, or of encouraging those basest of all double crimes where the really guilty person commits the further crime of diverting his punishment upon some other person. It is not, however, by increasing the number and complexity of our laws that we shall do the best possible to escape, or to diminish this difficulty. It is the rather by using the highest obtainable intelligence, scientific information, and the fair spirit, in administering the existing laws.

Fourth: As to the general relations of hypnotism to the law of the land, one improvement may safely be made. Public shows of hypnotic subjects should be forbidden by law. To give them should be made a punishable offence. Moreover, it might properly also be made illegal to attempt to hypnotize any one against his or her consent, or the consent of the legal guardian, for any purpose whatsoever—experimental, therapeutic, or other purpose.

Before leaving this subject I wish briefly to refer to a matter of the most profound interest both to psychology and to the law, but which it has probably never occurred to most of you to connect with the phenomena of hypnotism. From the psychologist's point of view the connection, however, is very close and immediate. I refer to the nature and effects of what is sometimes called "collective suggestibility." Multitudes—I may be permitted to say *masses*—of human beings, whose customary rationality and habits of reasonable self-control are of a low order, when under the impulse of smouldering passions and somewhat fixed suggestive ideas, often break forth with an amazing simultaneousness, on the slightest provocation, in the most frightful crimes. This is largely the psychological secret of the combined criminal action of lynchers, rioters, and mobs. In any of our great cities, or larger towns, it is entirely possible by skillful manipulation of the natural and valuable principles of sympathy and imitation to start up suddenly a widespreading and wholly unreasoning movement in the direction of various kinds of crime. Such phenomena of crime committed under the influence of collective suggestibility are as old as human history, from and before the time when the multitude cried "crucify him, crucify him," down to

the recent insane performances in the streets of Athens, or among the "Boxers" in China, or in our own Southern and Western regions. Laws and courts find almost insuperable difficulties in preventing or in punishing crimes due to "collective suggestibility." But I fear that certain political and social influences are steadily at work to-day in this country, to heap up a vast amount of this highly inflammable and dangerous material. And I am willing to close this paper—already too long drawn out—with the suggestion that only the steady training of the multitudes in that intelligence and righteousness which frees the individual from the power of ingeniously suggested but false and hallucinatory ideas, and puts and keeps him in a rational control of himself, can save us from the terrible consequences of crime committed through the influence of bad men upon "collective suggestibility."

George Trumbull Ladd.

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